



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2003

Mr. Jeffrey B. Hardaway  
Hayes, Coffey & Berry  
P.O. Box 50149  
Denton, Texas 76206

OR2003-7527

Dear Mr. Hardaway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189915.

You claim that the Pilot Point Independent School District (the "district"), which you represent, received a request for copies of "contracts, executed or not, approved by the Pilot Point Independent School District Board of Trustees or not, on land purchases or under consideration for purchases...." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the district has failed to comply with section 552.301 of the Government Code in requesting this decision. Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). In this case, you did not submit a copy of the written request for information from the requestor. Thus, the district has failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82

(Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You assert that section 552.101 in conjunction with section 551.072 and section 552.105 of the Government Code except the submitted information from public disclosure. However, section 552.105 is a discretionary exception under the Act that does not constitute a compelling reason sufficient to overcome the presumption that the requested information is public. *See* Gov't Code §552.007(a); Open Records Decision No. 522 (1989) (discretionary exceptions in general). Consequently, the district may not withhold the information under section 552.105.

Because section 552.101 may provide a compelling reason to overcome the presumption of openness, we will address your argument under this exception. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You claim that section 551.072 of the Government Code makes the submitted information confidential. Section 551.072 provides:

A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

Gov't Code § 551.072. Section 551.072 authorizes governmental bodies to hold closed meetings related to property transactions. However, this provision does not address the confidentiality of records. The fact that a subject was discussed in an executive session does not make information related to that discussion confidential. Open Records Decision Nos. 605 (1992), 485 (1987). Because section 551.072 is not a confidentiality provision, we conclude that it does not provide a compelling reason to withhold the submitted information. Therefore, you must release all of the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 189915

Enc. Submitted documents

c: Mr. David Lewis  
c/o Hayes, Coffey & Berry  
P.O. Box 50149  
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(w/o enclosures)